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Saturday, December 3, 1955 **Vol. CXIX. No. 49**

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NOTES OF THE WEEK

A Murderer's Property

A provincial newspaper reports proceedings, presumably under the Police (Property) Act, 1897, in which Barnsley magistrates were asked to make an order as to the disposal of the property of a man who had been executed for murder. He was stated to have written a letter expressing his wishes, but this did not amount to a will. The justices, after hearing the widow and other claimants, made orders that the police should hand over certain articles to certain persons.

The Act empowers magistrates to deal with property that has come into the possession of the police in connexion with a criminal charge. Such orders may require delivery of the property to the person appearing to be the owner, or, if the owner cannot be ascertained, the court may make such order as seems meet. In the present case it would appear that the magistrates did not determine who was entitled to the articles under an intestacy, but made the order they considered just.

The order of the magistrates' court does not necessarily determine finally the question of title, it merely gives possession, and it is open to any claimant to bring an action within six months of the determination of the magistrates' court.

Capital Punishment

Capital punishment is being widely discussed in the press, on the air, and in conversation. It is well that people should inform themselves upon this question, which involves matters of principle as well as of expediency. The fact that the number of persons upon whom the death sentence is actually carried out is comparatively small, is not a point of cardinal importance, and those who compare the figures with the appalling number of deaths on the roads are comparing statistics that do not properly admit of comparison.

In a recent article, the *Manchester Guardian* referred to a meeting opening a campaign for the abolition of the death penalty and suggested that although there seemed little prospect of parliamentary action in the near future what matters now is to carry the message of the opening meeting throughout the country. That message was that to inflict the death penalty even for murder, is essentially wrong, and to be justified if at all only by very strong evidence of its deterrent power and of the disastrous results of its removal; and, that such evidence simply does not exist. This, says the article, is not mere emotionalism; there is just as much emotionalism on the side of capital punishment as against it and much less reason. That may be true, and we deprecate any suggestion that advocates of abolition are sentimentalists or that their opponents are sadists. What is needed is an unprejudiced examination of the available facts in order that reasonable conclusions can be arrived at from those facts.

An impressive statement in the article is that Sir Ernest Gowers, the chairman of the Royal Commission, has said that he started the inquiry with no very strong convictions but had been inclined to favour capital punishment and disposed to think of abolitionists as rather sentimental people. He had ended, however, after some four years' study of the facts, a very firmly convinced abolitionist.

Condoned Adultery no Ground for Discharge of Order

It is not often that words are read into a statute when the words used are plain without addition, but this is sometimes necessary in order to avoid a manifest absurdity or an absolutely unjust position. Words were so read into s. 7 of the Summary Jurisdiction (Married Women) Act, 1895, as amended by the Act of 1925, in the case of *Marczuk* v. *Marczuk* (*The Times*, November 17) before a Divisional Court of the Probate, Divorce and Admiralty Division.

The husband had obtained from justices an order discharging a maintenance order, made in favour of his wife, on the ground of her adultery. The evidence showed that while the husband and wife were living apart there were periodical meetings at which intercourse took place, and that this happened after the husband knew of

his wife's adultery. The wife successfully appealed.

In the course of delivering the judgment of the Court, the learned President contrasted the language of s. 6 and s. 7 of the Act of 1895. The former provides that a married woman may not obtain an order under the Act if she has committed adultery unless the adultery has been condoned, connived at, or conduced to by the wilful neglect or misconduct of the husband. Section 7, which provides that upon proof that the wife has committed adultery the order shall be discharged, contains no similar exception, apart from the words added by the Act of 1925 about the adultery having been conduced to by the husband's wilful failure to pay under the maintenance order.

The Court held that the adultery, if condoned or connived at, must not enable the husband to get the order discharged, and that the words "upon which the husband could rely" must be read into the section after the word "adultery." Otherwise, the position would be that a husband who could not get relief in the Divorce Court because he had condoned his wife's adultery could nevertheless apply for the discharge of a maintenance order and the justices would be obliged to discharge it. That would be a shocking result.

The decision is of great importance to magistrates' courts. It is rather surprising that the point has not been raised before.

Too Many Driving Licences

The finance committee of the Warwickshire county council, according to a report in the daily press, is concerned about the growing cost of dealing with applications for driving licences. It is said that they estimate that in the current year 320,000 licences (this may well include licences of other kinds) will be issued by the council and that this represents the work of six clerks.

The committee has recommended that the Minister of Transport should be asked to consider issuing licences for a longer period and limiting the issue of provisional licences. In this latter connexion it is reported that a check of 115 provisional licence holders showed that 42 had each held at least three such licences, one had held 23, another 16 and another 11. Many people have thought for a long time that some steps should be taken to prevent people, particularly solo motor cyclists, from driving permanently on provisional licences. The motor cyclist's only handicap in so doing (if it can be called a handicap) is the requirement that he carry "L" plates. We think it can be assumed that it was never intended that motor cyclists who do not mind carrying "L" plates should be able to continue driving without even trying to pass a driving test. It is to be hoped that the proposed new Road Traffic Act will give to licensing authorities suitable powers to refuse to issue further provisional licences as was proposed in cl. 8 of the Bill previously before Parliament.

The other recommendations of the Warwickshire council's finance committee are that driving licences should be issued for periods of three or five years at a cost of £1 and £1 10s. respectively, with no surrender value, and that quarterly licences for vehicles should be abolished where the annual licence duty is £5 or less.

The difficulty which the council has to face is not only the growing costs of this service, but also the fact that it is becoming increasingly difficult to recruit the necessary clerical staff. The proposals certainly seem to merit consideration, though we are not clear why it is suggested that the cost of a longer period licence should be more, per year, than the present amount of 5*s*. There might be some point, if longer period licences were decided on, in keeping their yearly cost the same as at present, and allowing anyone who, for particular reasons, wanted only an annual licence to obtain that licence at a greater cost.

A Point under the Larceny Act

A charge of stealing as a servant, which was recently dismissed by Berkshire magistrates, led to some interesting discussion about the elements of the offence where the property consisted of cabbages growing in a nursery garden. The defendant, a man of good character, was employed in the nursery, and was said to have taken in all some 200 plants from the rows, taken them to a shed, partly covered them, and later on to have gone back and hidden them completely. Apparently he had not taken them from the premises when he was accused of stealing. The defendant said that surplus plants would be ploughed in and that it was customary for employees in gardens to take a few plants for their own gardens, though he admitted he knew his present employer would not have allowed it.

His solicitor submitted successfully that a charge of larceny by a servant would not lie, since there had been no abandonment of the plants between a severance from the soil and a taking of them.

A charge under s. 36 of the Larceny Act, 1861, of stealing plants growing in a nursery ground would not have involved this question, and the issue would have been one of fact. This seems more appropriate, and it would not have meant that a lesser charge had been preferred when there was a clear case of a more serious nature, but there may have been some reason that does not appear from the newspaper report.

It will be remembered that in s. 1 of the Larceny Act, 1916, it is stated that save as expressly provided in the Act, with respect to fixtures, growing things and ore from mines, anything attached to or forming part of the realty shall not be capable of being stolen by the person who severed the same from the realty unless after severance he has abandoned possession thereof. Before the passing of the Larceny Acts, the theory of the common law was that if a thing was attached to or growing in real property it became capable of being stolen only after it was severed from the realty. It remained the property of the owner of the land, but there could be no larceny if the severance and the taking away formed part of the same transaction. The rather anomalous position was that if a man dug up growing vegetables in a garden and straightway went off with them it was not larceny, but if he abandoned them in the garden and returned later for them that was larceny. Fortunately, statutes have put matters on a more reasonable basis.

Meat Content in Sausages

Following upon our brief reference at p. 695, *ante*, to the case of *Marston* v. *Loney*, we have received a transcript of the judgment in the Divisional Court from a correspondent who suggests that further comment might be useful.

In the course of his judgment, the Lord Chief Justice made it clear that he was not casting any doubt upon the validity of earlier decisions cited, adding that this case was being decided upon a very small point which was not likely often to arise. He commented upon the failure of defendants who dispute the analyst's certificate to give notice and have the analyst called as a witness. The whole of this case turned, said Lord Goddard, upon the form of the analyst's

certificate. Having stated his opinion that pork sausages should contain at least 65 *per cent.* of meat the analyst added that the sample in question contained only 58·5 *per cent.* He supported his opinion, he said, by several years' experience and by the fact that for a long time there was an order in force prescribing 65 *per cent.* That order, said the Lord Chief Justice, had been revoked; moreover it dealt with price as well as content. Lord Goddard referred to various orders that had fixed various prices, and said that it was a wrong reason for the analyst to say he based his opinion on his many years' experience. Where there was no standard fixed by law, the justices had to fix a standard, but they must have evidence on which they can fix a standard. If the defendant produced evidence to satisfy the justices the case would fail because the justices would fix the standard on the defendant's evidence, whereas if he did not satisfy them that the analyst was wrong he would be convicted. The justices in the present case were not satisfied that the standard set up by the analyst was right and therefore they said they had no evidence from which to fix the standard, and dismissed the information.

Suggestions for Mr. Butler (1)

In his Budget speeches the Chancellor has denied firmly that spectacular economies are possible in the field of administration: nevertheless, we are tolerably certain that he would uphold with equal firmness the proposition that something worthwhile can be reaped from this field —even if it isn't uranium. To achieve these useful results all that is needed is a pull on the starting lever of government machinery by the master hand, and we propose humbly to list from time to time a few suggestions for action.

Every six months each county and county borough council must submit to the Home Office lists of parental contributions in respect of children in care collected in its area, plus a remittance for the corresponding total, less 10 *per cent.* commission for collection. The list must distinguish between contributions paid in respect of children the responsibility for whose maintenance rests upon the authority making the return, and outside cases. Payments for approved school cases must be itemized by individual names. The information given in all these lists must then be recorded in the Home Office books and calculations made to arrive at the total amounts for redistribution to the authorities responsible for the care of the children in respect of whom the contributions have been collected. Apart from all the book-keeping the whole process takes time—a goodly amount of it—and it is usual for payments made by the Home Office to be effected many months in arrear. In addition, each authority must obtain for each case (often running into hundreds) specific approval from the Home Office before any outstanding items may be written off as irrecoverable. It usually takes the department several months to carry out this totally unnecessary work.

The whole of this procedure was investigated by the Local Government Manpower Committee in 1949 and 1950, the accepted recommendation being to the effect that the Home Office would consider the simplification of procedure for the disposal of these parental contributions. Nothing practical has come of this recommendation so far. It is true that at a meeting of local authority representatives with Home Office representatives in February, 1953, it was acknowledged that it would be simpler if parental contributions were credited to the child-care account of the collecting authority, particularly as it had been ascertained that about 90 *per cent.* of the contributions were collected by the care authorities. In the usual formula "the point had been noted for consideration when there was suitable amending legislation." A similar answer had been given to similar suggestions made some years previously by individual authorities: the period of inaction which can ensue following the recording of a note of this kind remains still, after some decades of experience, a matter of astonishment. It is particularly difficult to get action when the office work of a department and its detailed control over local authorities is in issue.

At any rate, here is something acknowledged to be cumbersome, wasteful and unnecessary: we hope the Chancellor will instruct his Treasury investigators to call for the papers and pull the lever.

Problem Families and Housing

Problem families, and we all know what is meant by that expression, are indeed a problem to local authorities, if they prove bad tenants, getting into arrears of rent, turning their dwellings into filthy homes unfit for children and the landlord gets rid of them. That landlord may be the local authority and in any case the burden of dealing with the problem family is likely to fall on the authority. If that authority accommodates most of the family in its homes or institutions the cost is much heavier than would be the expense of letting them live rent free. That, however, would be unfair to other and better tenants, and it would not solve the problem of improving the standard of care and cleanliness. If a local authority gave priority in re-housing to the worst type of tenants there would be a perfectly natural outcry from those who were more deserving.

An interesting article in the *Manchester Guardian* puts the question: "Does bad housing produce 'problem families' or do 'problem families' produce squalor wherever they may be housed?" and proceeds to discuss it, in the light of what has been happening in the city of York.

Giving Problem Families a Chance

As is admitted, in fairness to other towns which have greater difficulties, York is fortunate in comparison, in having abolished its worst slums and re-housed many of their occupants on its extensive housing estates. Most of the present problem families have been transferred to better quarters. Provided applicants for a council house do not already owe money to the corporation, they are given a chance when their turn comes, even if their present dwelling is slatternly and ill-kept. Once placed, these "shaky tenants" are given more than ordinary friendly help and supervision. In this, Family Service Units take a prominent part. It may involve scrubbing out the kitchen or taking a child to the clinic in the course of daily visits. The health department welfare worker is equally concerned to help in a variety of ways, and as informally as possible. Co-operation is complete.

The real test is what happens in an improved dwelling when such help is given to a problem family. Sometimes, standards of housekeeping rise and a convenient kitchen may inspire a woman to make some attempt to prepare meals. Admittedly, many fall back after a hopeful start, but, says the *Manchester Guardian*, the significant point is that they seldom fall as far as the level from which they came.

Twinning of Municipalities

There is an increasing tendency for the making of arrangements for the "twinning" of municipalities in this country with those on the Continent, in conjunction sometimes, with the Council of European Municipalities. There may be special local reasons for this such as in the friendship which is cultivated between two towns on each side

of the English Channel. In this way, Folkestone and Boulogne are "twins" and during the year there are exchanges of visits by representatives of one to the other. Apparently, however, "twinning" is desired by some much smaller communities. For instance, a village in Normandy with only 1,000 inhabitants sought the help of the British section of the International Union of Local Authorities to get into contact and pair with a village in Staffordshire. Where similar arrangements have been made, the first stages have usually been exchanges between the municipalities through the mayor, the town clerk and certain members of the council visiting the European town concerned, and *vice versa*. Unless the approval of the Minister of Housing and Local Government is obtained there are no general powers enabling the travelling expenses to be paid by the council. Hotel accommodation and hospitality are usually met by the hosts in either country. Recently there have been valuable exchanges between municipalities in this country and several European countries apart from the more or less formal "twinning" schemes. Such exchanges must be mutually beneficial, but ratepayers may be rightly critical if they are expected to foot the bill.

THE HEARING OF ADOPTION APPLICATIONS

[CONTRIBUTED]

Adoption proceedings in magistrates' courts are heard *in camera*. There is an informality about them which suggests that the procedure varies from court to court. The hearing may take place with all concerned sitting round a table in a small ante-room, or it may be conducted in the relatively strict formality of the juvenile court. It appears that no legal objection can be taken to either proceeding, but no doubt those responsible for regulating the procedure in the different courts would say not only that theirs was the better way, but also that it was the only proper way. Perhaps it would be safe to assume that the procedure adopted generally lies between the two extremes, and, as adoption applications are usually happy occasions, that an air of informality and friendliness prevails.

However, informality can disguise the important issues concerned, and would be positively dangerous in cases where a parent withdraws consent, or in any case where it is sought to dispense with a consent. But the danger here is obvious, and it is probable that most courts will adopt a formal approach at least until such questions are disposed of. There may be unsuspected dangers in cases which, so far as the consent of the parents is concerned, are perfectly straightforward, and yet in which there may be some element which would make the adoption undesirable to the minds of the magistrates.

The court adopting a formal procedure, will probably require the guardian *ad litem* to take the oath and give a verbal report, and then ask the applicants if they wish to ask him any questions upon it or to call any evidence themselves. In a court with an informal approach the magistrates may receive a written report and may even read it before the applicants are called into the room, then tell them that they have done so, and possibly ask them questions about certain parts of it. In cases where the guardian *ad litem* reports favourably upon the applicants, and recommends that an order be made, neither procedure is likely to be challenged. But where the report is unfavourable, and the guardian *ad litem* feels unable to support the application, the question of how his report should be given becomes of vital importance.

A court requiring the report to be given verbally on oath is likely to regard it as an important part of the evidence given in connexion with the application. A court which reads it privately, while still regarding it as important, would appear to take the view that it is a confidential report to the court.

An observance of the rules of evidence and the maxim which insists that justice must not only be done but also be seen to be done seems to be ample justification for a verbal report on oath. On the other hand, it could be argued, the very nature of the report is itself good reason for regarding it as confidential.

To illustrate how the different procedures would affect an application, suppose the guardian *ad litem* ascertains that the person nominated by the applicants as referee suspects that the male applicant has behaved indecently towards another child living in the same house. He is, of course, required to report that the referee does not recommend the applicants without reservation. If he is bound by the rules of evidence he cannot go further and say what the referee told him, and, if the referee is called, he, being a witness as to character, can, strictly speaking, give evidence only of general repute which may be contrary to his own suspicions. Thus a court which requires a report to be given verbally on oath and which applies the rules of evidence will not hear the suspicions of the referee. But where a report is regarded as given in confidence for the assistance of the court it is likely that it would not be regarded as evidence at all, and that no objection would be taken to a reference to the suspected misconduct in the report.

It is obvious that all relevant information as to the suitability of the applicants as adoptive parents should be placed before the court provided this can properly be done. For, not only is the court required, by s. 5 of the Adoption Act, 1950, to be satisfied that the order will be for the welfare of the infant, but also the guardian *ad litem* is required by r. 7 of the Adoption of Children (Summary Jurisdiction) Rules, 1949-1952, to investigate fully all relevant circumstances with a view to safeguarding the interests of the infant. It is, therefore, of some importance to ascertain whether information which as evidence would be inadmissible can properly be given to the court.

A further example illustrates another problem to be considered: that of making known to the applicants information which might only be given to the guardian *ad litem* in confidence.

The child who is to be adopted is aged 16, and has lived with foster parents for some time, his own parents being dead. The foster parents apply for an adoption order, but the child tells the guardian *ad litem* that he does not wish to be adopted by them as they have been unkind to him. He also says that if his foster parents hear that he has complained about them they will punish him unduly. For various reasons the local authority will not remove the child from the foster parents if an order is not made. Apart from the child's allegations they are regarded in every way as satisfactory foster parents.

There appears at first sight to be a good reason for not communicating to the applicants that part of the guardian's report which refers to the child's comments. It is probable that unless the guardian can refer to them the court will not hear of them, for the child will be unlikely to make them again in court in the presence of the applicants. However, if the matter is

treated as confidential, the applicants will have no opportunity of denying it.

It will clearly make a great difference to the nature of the application if information such as this is not communicated to the court. But if the court is only prepared to hear evidence on oath it will only hear the child if he can be persuaded to give evidence. It is not improbable that he will refuse to do so, or will be so unwilling a witness that the court will not have satisfactory evidence.

The way in which the report of the guardian *ad litem* is to be given is, therefore, an important matter to be considered, and it is interesting to compare the way in which other reports are required to be given to a court in various statutes. By s. 60 of the Magistrates' Courts Act, 1952, a probation officer reporting on the question of means in domestic proceedings may be required by the court to give his report orally, or to read his written statement, and if either party objects to anything in the statement the probation officer shall be required to give evidence on oath. Where a probation officer reports to an adult court the court is required, by s. 43 of the Criminal Justice Act, 1948, to give a copy of his report to the accused or his advocate. There is no reference to evidence on oath. By s. 20 (8) of the same Act a copy of any report by the prison commissioners as to the suitability of a person for borstal training shall be handed to the offender or his advocate. The Summary Jurisdiction (Children and Young Persons) Rules, 1933, contain special requirements for the reception of the report of a probation officer, a local authority, or a doctor, in juvenile courts. By rr. 11 and 21, such reports need not be read aloud, but the substance of any part bearing on the child's character or conduct must be told to him if the court considers it to be material to the manner in which he should be dealt with. The substance of any part relating to the parent's character or conduct, or referring to the character, conduct, home surroundings, or health, of the child must in any case be given to the parent if present; and the child or his parent may then call evidence material to such parts of the report. Once again, however, there is no requirement that the report itself should be substantiated upon oath.

From these examples it seems clear that the reports to the court referred to are treated by two Acts of Parliament and by rules made under another as distinguishable from evidence as such. From practical experience it is nevertheless true to say that in many cases such reports, especially those given by a probation officer, can have the effect of throwing the nature of the offence into a completely new light. Usually, of course, this is in the defendant's favour, but occasionally such reports can retail a history of his difficult behaviour whilst under supervision following a previous appearance in court, and in other ways present him as a far more unsatisfactory person than the offence (and possible previous convictions) would have led a court to expect him to be.

However, the report of a guardian *ad litem* does not seem to be comparable with other reports made to magistrates' courts, except that it is made to assist the court. But, even so, it does not give the same assistance: for the reports of doctors, headmasters and probation officers are made almost exclusively to assist the court in deciding the most appropriate method of dealing with the person before it, and are not given until after a finding of guilt or whatever other finding would be appropriate in a particular case. In adoption proceedings there is no adjudication comparable with that of finding the allegation proved, unless it is the decision to grant or refuse the application, and the guardian's report is given before the court has made that decision. The guardian's report, therefore, is part of the matter upon which the court is required to adjudicate.

Reference was made above to the duty of the court to satisfy itself that the order would be for the welfare of the infant, and of the duty of the guardian *ad litem* to investigate all relevant circumstances so as to safeguard the interests of the infant. Quite clearly, then, the report of the guardian is intended to be a means by which the court can be satisfied that an order will be, or will not be, for the welfare of the infant. But, as has been shown, the report of the guardian may contain statements which, if made known to the applicants, might be disputed by them. In the example of the referee who had suspicions of the male applicant the difficulty of obtaining evidence of such a matter was demonstrated. Despite this, a guardian obtaining information prejudicial to the applicants would certainly consider it a relevant matter to report to the court, and justices, too, could only feel that they were safeguarding the infant's welfare thoroughly if they knew as much as possible about the applicants. But the allegations might, in fact, be ill-founded, or mistaken, and this would seem to be reason enough to afford the applicants the protection of the rules of evidence.

A court which prefers to regard the guardian's report as made confidentially to the justices might attempt to avoid an obviously unfair situation by reading over to the applicants that part of the report which contained a statement tending to suggest that they were not suitable persons to adopt, and inviting them to comment upon it. But, even so, the court will have to decide between what is contained in the report and what the applicants say. It would surely not be suggested that any matter in dispute concerning an issue before a court could be decided on the basis of an unsubstantiated allegation, even if the person against whom the allegation is made were given every opportunity to disprove it. And a suggestion that the character or suitability of applicants is not what it should be is not only material but vitally important to the application.

There appears to be every justification for suggesting that in cases where the applicants might dispute a statement made in the guardian *ad litem*'s report, such a statement should be communicated to them. It would no doubt be agreed that unless such a statement were made having due regard to the rules of evidence the person against whom it was made would be at a disadvantage. Therefore, to require such a statement to be given on oath, and to allow it to be made only if it is admissible as evidence, would seem to be the only proper course to adopt.

It would appear to follow logically from this that the whole of a guardian *ad litem*'s report should be given in the same way. An examination of sch. 2 of the rules, however, shows that the guardian is required to report on a number of matters, and that the information obtained in several of these matters will, in many cases, have been obtained from third parties. If the report is to be treated as evidence then witnesses would be required to present that information to the court. Not only would this be a cumbersome method of dealing with what are usually straightforward issues, but it would be contrary to the tenor of the rules which specifically require the guardian himself to report to the court on all relevant matters.

Nevertheless, while full effect must be given to the requirements of the rules, ordinary principles of justice must at the same time be observed. It is submitted that this can best be done by requiring the guardian *ad litem* to give his report verbally in the presence of the applicants. It should be made clear to them that they may challenge any statement contained in the report. If they do, then, if he has not already done so, the guardian should be required to take the oath and give evidence and, if necessary, call witnesses, to support the statement. If he is unable to do this, the statement ought not to be taken into consideration by the court.

C.T.L.

A DAY WITH THE MAGISTRATES

By THE REV. W. J. BOLT, B.A., LL.M.

The opportunity of attending the annual meeting of the Magistrates' Association was very welcome to a private student of our legal system. They are an ancient and potent ingredient of our British Constitution; and although I have met so many as individuals, I had never had occasion to observe them in the mass.

My first impression was of the devotion which draws such a vast company of voluntary workers from all corners of the kingdom, at their own expense (and without any allowance from the Inland Revenue, as one speaker pointed out), for the sole purpose of improving their efficiency and usefulness to the community. The general public knows and hears nothing of this, and cares less; but I must put on record my profound respect that such a volume of disinterested activity persists in our day. As an outsider who was privileged to behold it, I can only regret that our nation is so unaware of the phenomenon.

I sat through the day's proceedings at the Guildhall, and cannot recall a dull minute. The proceedings were planned with exquisite efficiency; and, despite the firm chairmanship of Lord Merthyr, the rank and file asserted their right to such a share of the discussions that several items on the agenda were squeezed out through lack of time. Some years ago, a country magistrate gave me a picture of the central organization as a stern Kremlin which dominated the country benches with an iron bureaucracy. My impression at the Guildhall was precisely the opposite. Members were given the utmost freedom and encouragement to speak and to vote; everybody counted for one, and nobody for more than one.

The welcome on behalf of the lord mayor was given by Sir Frank Alexander. So often, on similar occasions, that civic greeting becomes a heavy and conventional formality; but Sir Frank's remarks were singularly appropriate. Speaking briefly from his own experience as a magistrate, he affirmed that the first object of the criminal courts must be to protect society against the wrongdoer, but very close in importance to that aim must be eagerness to help the offender to regain his self-respect and become a useful member of the community. He quoted a definition of freedom as the right to discipline one's self so that one does not need to be disciplined by others. Many of the offences with which he had been called upon to deal, sprang from a lack of discipline in the home, from a decline in the sanctity of home life. It would be a useful service to the community if the magistrates could bring home that no freedom can be attained without discipline.

Lord Merthyr, whose chairmanship impressed me as one of the association's major assets, outlined the constitutional changes which the meeting was invited to sanction; and described the important activities which had kept the central organ of the association busy during the past year. He mentioned the sinister detail that, in the past year, its expenditure had exceeded its income by £1,800.

Some points in the reports submitted for the approval of the meeting engendered warm opposition. The first storm blew up over an amendment to a proposal that the law relating to homosexual offences was in need of change. Discussion strayed into two quite different dimensions. Some speakers contended that the association must not lend its support to any change that appeared to diminish the moral and social danger of these offences; other speakers, whilst fully cognizant of this difficulty, addressed themselves to the question whether the law, in its present state, is as well adapted as it might be for dealing with such offenders. Mrs. Crewdson defended the report with admirable force and conciseness; but the amendment to delete that particular recommendation was passed by an overwhelming majority.

The remarks of Dr. R. M. Jackson in this debate were noteworthy. He remarked that the criminal law is only one of the forms of control which society exercises. There are many regrettable forms of conduct, such as fornication and adultery, which it is not wise to control by criminal law. Some factors the criminal law must at all costs protect—young people, public decency, and people who are handicapped or under any disability.

On the re-election of officers, a letter was read from the Lord Chancellor, regretting that the requirements of the Malta round-table conference prevented him from attending the meetings.

The resolution approving the new constitution was moved by Dr. R. M. Jackson in a speech of outstanding ability. The association had grown so rapidly in recent years that a new costume was needed. Its structure is peculiar. It has no club facilities, and none of the common features of ordinary professional organizations. The annual meeting is the controlling authority of the association, but the big bulk of the 10,000 members can never come to it. Many members attend only at personal sacrifice. The provisional constitution which was being submitted to the meeting, took note of the practical difficulties, and tried to solve them.

There was a diversion when, on objection taken to the wording of the new "Objects Clause," the chairman disclosed that it was the handwork of learned counsel.

The provisional constitution was approved with very few dissentients.

Several speakers through the course of the day mentioned that, although membership has progressively increased throughout all the lifetime of the association, yet today, nearly half the magistrates of the country are still not within its ranks. To an outsider, this disclosure was bewildering. No one is conscripted into the commission of the peace. The very motive that induces any citizen to accept nomination—what we vaguely call "public-spiritedness"—should move him to make his service to the community as efficient as possible. I have delved sufficiently into the early history of the association to be convinced that its promoters launched it with that identical object. Its springs were not in any government department, but in the magistrates' rooms of local courthouses. It was launched by magistrates for the assistance of magistrates in the better service of the community.

All that the pioneers hoped for it (and the inside story is to be found in the pages of the "J.P."), appears to me to have been abundantly vindicated by its later history, and I am mystified that so many justices remain outside its ranks.

These reflexions were fortified by the remarks of the Home Secretary, Major Lloyd-George, who addressed the afternoon session. He began by reminding the meeting that a big proportion of the duties of the Home Secretary are concerned with the justices of the peace.

The main theme of his remarks was the value of statistics, which the reported remarks of a speaker on the previous day, appeared to disparage. This is an issue which criminologists are constrained to scrutinize carefully, and the principles enunciated by the Home Secretary were above criticism. He said that in considering whether criminal statistics are reliable, we should remember that their compilation is a very different matter from preparing tables of trade and production. The manufacturer will tell you how many cars he has exported; but the criminal is not likely to tell you exactly how many crimes he has committed.

Criminology always stresses the need of handling statistics with great caution and restraint. Human conduct incorporates so many factors that defy numerical assessment; and it has always been a maxim of criminologists that even the most carefully compiled statistics need caution and critical interpretation. The Home Secretary seemed quite cognizant of this, and claimed nevertheless that government statistics do give a tolerably accurate picture of the cases brought before the courts and reported to the police. He affirmed that the Home Office had been carefully scrutinizing the problems which envelop the production of statistics, and over a long period, with a view to making them as useful as possible.

Having paid some attention to the problem, I believe that the Home Secretary was wise in stressing the claim. The technique of making statistical analyses in government departments has shown a progressive improvement from decade to decade.

The Minister mentioned also that the Howard League had recently brought to the notice of the Government the urgent desirability of finding alternatives to short terms of imprisonment. The Home Office recognized that short sentences could not implement the object of training which every modern penal system must stress, and that the harm arising from short sentences often perceptibly outweighed the good. He cited the evils that arise from overcrowded prisons and add to the cares of the prison commissioners.

These observations were not novel, but were an appropriate topic for a Home Secretary talking to magistrates. So was his observation that " a monetary penalty is equitable only if proportionate to the means of the offender." He put in a timely reference to the application of the Road Traffic Acts. In a recent year, there were 240,000 road casualties, of which 5,000 proved fatal; and he had to hear criticisms that the courts were too lenient in dealing with the offenders. He drew the attention of the magistrates to the disparity between the number of charges for speeding and the number of convictions. The average fine imposed had been £2 10*s*. The statistics he quoted for charges of careless driving reflected a widespread reluctance of benches to impose the penalty of disqualifying from driving. The Home Secretary asked magistrates to pay closer attention to this problem. He mentioned also that he was giving much attention to the supervision of the probation service.

The meeting then considered some of the resolutions which private members had contributed to the agenda. The first was a proposal to amend the present law of abortion, and was moved by Mrs. Child, of Stockton-on-Tees. Her criticism of the present law, based on first-hand experience of conditions in an industrial region, was magnificently marshalled, and I hope that a verbatim report of her remarks will be available for scientific study. This was a cogent debate; all the speakers kept to the point, and every point of view on this delicate and contentious issue was presented to the meeting. The body of the meeting showed itself as alert to the problem as the outside public, and more members desired to speak on the resolution than the pressure of time would allow. The resolution in favour of the proposed change was passed by a fair majority.

Then came a discussion on a resolution about neglectful mothers. I could only regret that the daily newspapers did not pay more attention to this item. A report on this discussion would have given the world a much more faithful picture of magistrates in conference than some reports of the annual meeting which I have read. Here they were at their best, disclosing how they invigilate the social problems of which they have intimate and unique knowledge, which the world at large does not see. Mrs. Spurgin, of Campden petty sessional division, Gloucestershire, in moving the resolution, revealed how carefully some magistrates explore problems beyond the stage of the court hearing. She cited Birmingham as an example of the special interest the prison commissioners take in the problem. In 1953, 448 mothers had been convicted, and the offence was one for which the reaction of the community must be more clearly training than punishment.

This point was taken by Mr. G. J. Morley Jacobs, in seconding the resolution. He recalled that it is the stigma of the sentence, and not the treatment, that constitutes the true " punishment." He asked the meeting to consider how harshly the two ingredients of imprisonment, separation from home and loss of liberty, militate against the special circumstances of the married woman. The State had a duty to see that married women convicted of negligent treatment of their children, should be given the special help they need. Present facilities allow of only one-sixth of the married women now convicted, receiving the proper training and influence without which it is likely the offence will be repeated.

The end of the meeting became an unhappy race against the clock, but Mrs. Ede put before the meeting a resolution from the justices of Worcester. It stated disapproval of the growing practice of removing on application the statutory 12 months' disqualification imposed on motorists convicted of specified driving offences. Mr. G. E. Langley, in seconding the resolution, pointed out that monetary penalties are not the deterrent they used to be, and that the disqualification is a penalty which can be used more potently.

There was an unmistakable enthusiasm among the meeting over the proposal, and I am certain that a host of members would have taken the rostrum if time had allowed.

The chairman was forced to ration time stringently; and three resolutions on the paper, on probation orders, special schools, and, again, the statutory power of disqualifying convicted motorists could not be discussed. All three were of major social importance; but the agenda was congested at both sessions. This testifies to the vigour and enthusiasm of the rank and file who, it appeared to me, are never so apathetic that they are dominated by a central caucus.

My final conclusion when the proceedings were over, was a deep regret that the public, whose unpaid servants the justices are, know and hear so little of this vast volume of devoted and conscientious service.

The summary jurisdiction is a legal anomaly of which the nation should be proud. The nation is not merely apathetic; it is totally ignorant; and it would be a useful contribution to our civic education if the proceedings at another annual meeting could be brought into a few million homes by wireless or television.

THE REINSTATEMENT OF HIGHWAYS

[CONTRIBUTED]

This article seeks to present a summary of the existing legal responsibilities of statutory undertakers and highway authorities for the reinstatement of the highway after it has been opened up in the exercise of statutory powers. The Public Utilities Street Works Act, 1950, which came into force on April 26, 1951, modified all the then existing statutory legislation dealing with the reinstatement of highways (except the Tramways Act, 1870) by enacting that the Street Works Code should henceforth be the only statutory enactment governing this matter. It will therefore be convenient to consider the position before and after the passing of the Act of 1950.

THE POSITION AT COMMON LAW AND BY STATUTE BEFORE THE PASSING OF THE PUBLIC UTILITIES STREET WORKS ACT, 1950

Section 10 of the Gasworks Clauses Act, 1847 (which is in similar terms to s. 32 of the Waterworks Clauses Act, 1847, and is also incorporated in s. 12 of the Electric Lighting Act, 1882, and s. 11 of the schedule to the Electric Lighting (Clauses) Act, 1899) provided as follows:

> "When the undertakers open or break up the road or pavement of any street or bridge, or any sewer, drain, or tunnel, they shall with all convenient speed complete the work for which the same shall be broken up, and fill in the ground and reinstate and make good the road or pavement, or the sewer, drain, or tunnel so opened or broken up, and carry away the rubbish occasioned thereby, and shall at all times, whilst any such road or pavement shall be so opened or broken up, cause the same to be fenced and guarded, and shall cause a light sufficient for the warning of passengers to be set up and maintained against or near such road or pavement where the same shall be open or broken up every night during which the same shall be continued open or broken up and shall keep the road or pavement which has been so broken up in good repair for three months after replacing and making good the same, and for such further time, if any, not being more than 12 months in the whole, as the soil so broken up shall continue to subside."

In *Hartley* v. *Rochdale Corporation* [1908] 2 K.B. 594; 72 J.P. 343, it was held that the mere passive omission by a road authority to rectify a subsidence in a road in their area, which had been originally occasioned by the neglect of a water company to make good the road after having broken it up for the purposes of removing and reinserting a stop-tap box, did not exonerate the water company from liability for an injury caused to a person using the road by reason of the subsidence. In this case the defendants, who were the water authority but not the road authority and to whom s. 32 of the Waterworks Clauses Act, 1847, applied, were held liable for the above injuries although the subsidence occurred after the expiration of the period of maintenance specified in s. 32 of the Waterworks Clauses Act, 1847. In this case the following extract from the judgment of Phillimore, J. (at pp. 598 and 599 of the first-cited report) states the extent of the obligations of statutory undertakers to put back the highway to its former state.

> "If this stop-box, which I presume is of metal, had been properly lodged in the highway by the defendants, and they had made good not only at first, but within their period of liability, any subsidence of the ground around it which they had had to remove, so that it would not subside shortly afterwards, and if the inequality in the road was due to the unequal wearing of metal and stone or the inequality of resistance of the earth with the brick and masonry under the iron, then, according to *Moore* v. *Lambeth Waterworks Co.* (1886) 50 J.P. 756, and to general principles, the defendants would not be liable; they would have lawfully put in the road something which they had a right to put there, and the inequality would be merely the effect of wear and tear, which the highway authority ought to make good. But here the county court Judge has found, and there was evidence to support his finding, that the defendants put back the ground in such a way that there was a subsidence within their year of liability, and that that subsidence was not effectively made good within that year. I must point out that it will not do to say 'I came in and reinstated, by myself or by my contractor, and made the ground up level again,' if the ground is so badly made up that in a brief period of time the inequality revives. It is the duty of the water company to reinstate and to leave its reinstatement in such a condition that no further reinstatement will be required and that the inequalities will only be produced by the natural consequences of wear and tear."

The obligation to reinstate is an obligation to restore the *status quo ante* (*Schweder* v. *Worthing Gas Light and Coke Co.* (1912) 76 J.P. 3). Statutory undertakers who break up highways are therefore obliged, when reinstating the trenches in such highways, to replace the highway in the same condition in which it was found. This normally would mean replacing the soil and other materials which were taken out, but it may also mean adding new materials and even weak concrete in order to put it back in the same condition, *e.g.*, where the same solidarity and strength is required. The liability to use concrete as part of the reinstatement where no concrete previously existed was considered in the case of *Commercial Gas Co.* v. *Poplar Borough Council* (1906) 70 J.P. 178. In this case it was held that a road authority who, acting under s. 114 of the Metropolis Management Act, 1855, and s. 82 of the Metropolis Management Amendment Act, 1862, reinstate a street broken up by a gas company may recover as part of the expense of such reinstatement the expenses of placing a course of concrete where there was previously no concrete, or of placing an extra thickness of concrete where there had previously been concrete, if the concrete or extra concrete was necessary in order that the surface should be made as good, and should remain as good, as it was before the breaking up. They may also, if they employ contractors to do the reinstatement, recover a proper additional sum in respect of the supervision actually exercised by their officers over the work in addition to the sum paid to the contractors: *New River Co.* v. *Westminster City Council* (1904) 73 L.J.K.B. 1009.

Section 16 of the Electric Lighting (Clauses) Act, 1899, empowers a street authority to give notice of their desire to exercise or discharge all or any of the undertakers' powers to reinstate and make good any streets broken up by the undertakers. In the case of *Fidler* v. *Electrical Power Distribution Co., Ltd., Electrical Review*, July 25, 1902, a road authority, having given notice under this section of their desire to do the work of reinstating certain streets, began the work of reinstatement, but were stopped by frost. The plaintiff having sustained personal injury through the non-repair of the street, it was held in the Epsom county court that the road authority, and

not the electric lighting company, were responsible for the injury sustained.

In London, the road authority may, under s. 114 of the Metropolis Management Act, 1855, reinstate roads broken up for laying gas pipes at the expense of the gas company. It was held that where a borough council exercise this power the gas company are not liable for damage caused by the improper or negligent execution of the work of reinstatement: *Cressy* v. *South Metropolitan Gas Co.* (1906) 70 J.P. 405. This case was distinguished in *Brame* v. *Commercial Gas Co.* [1914] 3 K.B. 1181, where the gas company after the laying of pipes gave notice to the borough council that reinstatement of the road was necessary (the borough council purporting to act under s. 114, having passed a resolution that they would in all cases do the work of reinstatement themselves). It was held that the resolution of the council did not *ipso facto* release the gas company from the duty imposed by s. 114. Such release could only be obtained by the council's dismissing the company from control and taking charge of the work themselves.

In *Huyton and Roby Gas Company* v. *Liverpool Corporation* [1926] 1 K.B. 146, it was held (1) that there was a continuing duty under s. 32 of the Waterworks Clauses Act, 1847, upon the defendants who, as water undertakers, had opened up the road to see that the ground was properly filled up, and that time did not begin to run under the Public Authorities Protection Act, 1893, so long as that duty remained undischarged; (2) that the plaintiffs were entitled to recover compensation for all the damage done to their gas pipes through the defendants' breach of duty, including that which resulted from fractures which occurred more than six months before action brought.

If the duty of reinstatement is taken over by the highway authority under statutory powers, the undertakers are, from that point forward, absolved from duty under s. 32 of the Waterworks Clauses Act, 1847, even though they do the work for the highway authority: *Rider* v. *Metropolitan Water Board* (1949) 113 J.P. 377. In the case of *Longhurst* v. *Metropolitan Water Board* (1947) 111 J.P. 212, it was held that s. 32, *supra*, obliges a water board who break up a street under statutory powers to reinstate and repair such part of the road as they take up in the course of their statutory authority, but has no bearing on their liability to answer for other damage to the street.

The case of *Withington* v. *Bolton Borough Council* [1937] 3 All E.R. 108, concerned the reinstatement of an unadopted street. A road had been dedicated to and accepted by the public but not yet adopted by the local authority, so that the road was repairable by no one. The local authority was also the water authority and in this capacity in September, 1934, it laid in the pavement of the road certain stop-cocks and levelled them with the pavement by ramming in earth. Owing to the action of rain and weather upon the earth one of the stop-cocks protruded. In September, 1916, the plaintiff fell over the protruding stop-cock and injured herself. In an action for damages the local authority relied upon the Waterworks Clauses Act, 1847, s. 32. It was held that it was not sufficient for the local authority, when it reinstated the road in accordance with its obligations under the Waterworks Clauses Act, 1847, s. 32, to level up the pavement with earth or otherwise, in such a manner that the action of the weather would revive the inequality; but the road ought to have been so reinstated that no inequalities would be produced except by the natural consequences of wear and tear. The local authority having failed in its statutory duty was therefore liable.

Lastly, it remains to consider under this head the extent of the duties of highway authorities themselves to reinstate excavations made by them in highways, *e.g.*, in their capacity as sewer authority. The case of *Newsome* v. *Darton Urban District Council* [1938] 1 All E.R. 93; 102 J.P. 409, provides a useful guide as to the responsibility of the highway authority for effectively reinstating excavations made by such authority. In July, 1933, the defendants had made a trench in a highway for the purpose of executing certain drainage work. The excavation was filled in, and in 1935, when the surface was tar-sprayed and chippings were rolled in with a steam-roller, the surface was said to be level. In 1936, a depression had formed at the place where the work had been done, and the jury found that the highway at this place was dangerous to those using it with due care. The jury also found that, although the original work was executed without negligence, the dangerous condition was due to the work of the defendants, and that the defendants were negligent in not discovering and taking steps to remedy the danger. The plaintiff, having been thrown from his bicycle and injured by reason of the subsidence of the road at the place in question, brought an action against the defendants as the highway authority responsible for the repair of the road. It was held that there was a duty on the defendants to make good the inevitable subsidence resulting from their work in 1933, and they were negligent in not discovering, and in not taking steps to remedy, the danger. The following passage from the judgment of Atkinson, J., is apposite:

> " . . . until any chance of subsidence has disappeared, until the road has been made up for some time, until it has reached a point at which absolute stability has been achieved, then the original state of things has not been restored. To quote Lord Halsbury again, it has not been 'restored into the condition in which it was before that alteration of its structure began.' It seems to me that it is all part and parcel of what they did. They began the work, and that work would not be properly finished until the subsidences, which were inevitable from time to time, had been filled in, and the road had finally been made good."

The following passage from the judgment of Lord Halsbury in *Shoreditch Corporation* v. *Bull* (1904) 68 J.P. 415, was quoted and followed in *Newsome's* case:

> " It is enough for me to say that the person sued was the person who interfered in the first instance with the ordinary structure and normal condition of the road and that was an act—not an omission to do an act but an act—and until the road was restored in its entirety to the proper and normal condition so that it could be properly and without undue risk traversed by the public at large, it seems to me that it would be idle to say that you could put your finger upon any particular point of time and say that the liability of the sewer authority began then and ended then, and then it was handed over to an authority which is not responsible for nonfeasance, and if that authority did nothing nobody is responsible at all. That is a process of reasoning, to which I for one will not assent. The moment the structure of the road is interfered with, and it comes within the ambit of the operation commenced by the person who is entitled to interfere with the structure of the road, then, until that road is restored into the condition in which it was before that alteration of its structure began, it seems to me the person who interfered with it is responsible for a misfeasance."

Greer, L.J., in affirming the decision of Atkinson, J., in *Newsome's* case in the Court of Appeal [1938] 3 All E.R. 94, summarized the position as follows:

> " As regards a sanitary authority, once they exercise their rights as a sanitary authority to make a hole in the road for sanitary purposes, then the obligation is put upon them, by the fact that the hole is made for sanitary purposes, in the

first instance, to fill it up properly, and then, subsequently, to maintain it by the exercise of reasonable care and reasonable supervision. In my judgment, unless there has come a time when the tribunal of fact is able to state that there is no longer any danger in that part of the road which has been dealt with by the sanitary authority, the obligation of the sanitary authority to exercise reasonable care is to see that the roadway in the place where they originally made their hole is maintained in a safe condition."

In order to complete this part of the summary, attention is drawn to s. 27 of the Tramways Act, 1870, which provides as follows:

"*Completion of works and reinstatement of road.*—When the promoters have opened or broken up any portion of any road, they shall be under the following further obligations, namely,

1. They shall, with all convenient speed, and in all cases within four weeks at the most (unless the road authority otherwise consents in writing) complete the work on account of which they opened or broke up the same, and (subject to the formation, maintenance, or renewal of the tramway) fill in the ground and make good the surface, and, to the satisfaction of the road authority, restore the portion of the road to as good condition as that in which it was before it was opened or broken up, and clear away all surplus paving or metalling material or rubbish occasioned thereby.
2. They shall in the meantime cause the place where the road is opened or broken up to be fenced and watched, and to be properly lighted at night.
3. They shall bear or pay all reasonable expenses of the repair of the road for six months after the same is restored, as far as those expenses are increased by the opening or breaking up.

If the promoters aforesaid fail to comply in any respect with the provisions of the present section, they shall for every such offence (without prejudice to the enforcement of specific performance of the requirements of this Act or to any other remedy against them) be liable to a penalty not exceeding £20, and to a further penalty not exceeding £5 for each day during which any such failure continues after the first day on which such penalty is incurred."

A statutory power conferred for the purposes of a tramway undertaking is not a statutory power to execute undertakers' works within s. 1 of the Public Utilities Street Works Act, 1950, and the Street Works Code in part I of that Act regulating the breaking open of streets does not apply to a tramway; nor do the special provisions of s. 11 of that code for the protection of transport authorities apply to a tramway undertaking. A tramway undertaking is not a transport undertaking within that Act so as to subject it to the code in part II relating to apparatus of statutory undertakers affected by transport works of a transport undertaking; *see* s. 21 (1) (*c*) and (3); nor do the provisions of s. 26, relating to undertakers' works which are likely to affect other undertakers' works, apply. A tramway includes a trolley vehicle system.

(*To be continued.*)

WEEKLY NOTES OF CASES

QUEEN'S BENCH DIVISION

(Before Pearce, Barry and Glyn-Jones, JJ.)

PETERBOROUGH CORPORATION *v.* HOLDICH & COATES

October 21, 1955

Public Health — Dustbin — Power to require owner or occupier of premises to provide—Appeal to justices against requirement by person aggrieved—Order of justices—Decision that it was not equitable notice should have been served on landlord—Refusal to make order in respect of notice against occupier—Discretion of justices—Public Health Act, 1936 (26 *Geo.* 5 *and* 1 *Edw.* 8, *c.* 49), *s.* 75 (1)—*Local Government* (*Miscellaneous Provisions*) *Act*, 1953 (1 *and* 2 *Eliz.* 2, *c.* 26), *s.* 8 (4).

CASE STATED by Peterborough justices.

The appellants, Peterborough Corporation, served on the respondents, Holdich and Coates, who were respectively owner and occupier of premises within the area of the appellants, a notice under s. 75 (1) of the Public Health Act, 1936, requiring them to provide dustbins for the reception of house refuse. Both the respondents appealed to a magistrates' court under s. 75 (1) of the Act against the requirement of the corporation. The justices were of opinion that no sufficient dustbin was provided, but that it was inequitable, within the meaning of s. 8 (4) of the Local Government (Miscellaneous Provisions) Act, 1953, that the notice should have been served on the owner. They, accordingly, allowed his appeal, and they declined to make an order in respect of the notice on the occupier. The corporation appealed, and the question for the opinion of the court was whether, the justices having come to the conclusion that no sufficient dustbin was provided at the premises at the time of the service of the notice and that it was inequitable in all the circumstances that the notice should have been served on the owner, it was then their duty to make an order against the occupier with respect to compliance with the notice. By s. 8 (4) of the Act of 1953: "Where an appeal is brought under s. 75 (1) [of the Act of 1936] in respect of a notice requiring one of two persons who are respectively the owner and occupier of a building to provide a dustbin, and the grounds upon which the appeal is brought include the ground that it was not equitable that the notice should have been served on the appellant . . . (*b*) on the hearing of the appeal the court may make such order as it thinks fit with regard to compliance with the first-mentioned notice either by the appellant or by the said other person; and in exercising its powers under this subsection the court shall have regard, as between an owner and an occupier, to the terms and conditions, whether contractual or statutory, of the tenancy of the premises concerned."

Held, that, on the proper construction of the section, once it had been proved that there was no adequate dustbin, the justices had a duty to make an order against either the owner or the occupier, and the case must be remitted to them with that direction.

Counsel: *Dennis Smith* for the appellants; *Patrick Fitzgerald* for the respondent justices.

Solicitors: *Sharpe, Pritchard & Co.*, for *C. P. Clarke*, Peterborough; *Bridges, Sawtell & Co.*, for *Percival & Son*, Peterborough.

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

PROBATE, DIVORCE AND ADMIRALTY DIVISION

(Before Lord Merriman, P., and Barnard, J.)

CRAWFORD *v.* CRAWFORD

November 3, 4, 1955

Husband and Wife—Persistent cruelty—Sexual offences by husband against third parties—Bullying and aggressive attitude towards wife—Different forms of mental ill-treatment taken together to found charge of persistent cruelty.

APPEAL from justices.

The parties were married in 1947 and there was one child of the marriage. On June 18, 1955, the wife discovered that a charge was pending against the husband that he had indecently exposed his person on June 8, and she thereupon left the matrimonial home. When charged with the offence the husband pleaded Guilty and asked for six similar offences to be taken into consideration. He was placed on probation. On a complaint by the wife that the husband had been guilty of persistent cruelty towards her, the justices found that, though the course of conduct relating to these offences had not been entered on by the husband with the object of injuring the wife's health, he must have known, had he considered the matter, that it would be likely to injure her health when she came to know of it, by reason both of the shock of the disclosure and of the gossip which would arise in the small community in which they lived. The justices found (i) that the wife's health had suffered in consequence, and (ii) that a state of friction had existed throughout the marriage to which "the husband's bullying and aggressive attitude had contributed."

They accordingly found the complaint of cruelty proved and made an order in favour of the wife. On appeal by the husband,

Held, in relation to cases of mental cruelty, the authorities lay down the following principles: (i) cruelty may be inferred from the whole facts and atmosphere disclosed by the evidence and it is wrong to consider whether each act in itself amounts to cruelty; (ii) actual intention on the part of the husband to injure the wife is an important, but not an essential, factor; (iii) it is impossible to create categories of acts or conduct which do or do not amount to cruelty; (iv) sexual offences directly relevant to the husband's conjugal obligations may constitute ill-treatment of the wife; (v) mental ill-treatment may be coupled with physical ill-treatment in order together to found a charge of persistent cruelty. Since mental and physical ill-treatment can, though they were not *ejusdem generis*, be taken together, it must follow (vi) that different forms of mental ill-treatment may be taken together in order to found a charge of persistent cruelty.

Held, therefore, that the justices had not misdirected themselves in law or failed to appreciate the nature and weight of the evidence, and, accordingly, the court could not interfere with their finding.

Counsel: *M. R. Nicholas* for the husband; *C. N. Lees* for the wife.

Solicitors: *Pattinson & Brewer*, for *F. Edwin Monks & Co.*, Manchester; *John Pinto*, for *J. N. Brookes*, Manchester.

(Reported by G. F. L. Bridgman, Esq., Barrister-at-Law.)

(Before Barnard and Willmer, JJ.)

LEWIS *v.* LEWIS

May 19, 20, 1954

Husband and Wife—Desertion—Constructive desertion—Husband convicted of indecent assault—Departure of wife from matrimonial home—Husband's desire for reconciliation.

APPEAL from justices.

The parties were married in 1942. In May, 1952, the husband indecently assaulted another woman in a cinema. The wife read in a newspaper the account of the preliminary hearing before the justices of the charge against the husband, and thereupon she left the matrimonial home. At the trial in September, 1952, the husband pleaded Guilty, and he was granted an absolute discharge. In March, 1953, a summons was issued against the husband on the wife's complaint that he had deserted her. In evidence the wife said that from the moment she heard about the case against the husband she left the house and completely finished with him from that day. The husband said he had written to the wife asking her to take him back, but his letters were ignored; that he was sorry for what he had done; and that he wished to return to cohabitation with the wife.

Held, the offence was committed by the husband without the consent of the other woman so that it could not prompt any reasonable suspicion of adultery; the wife did not have just cause for leaving the husband merely because he was charged with that one isolated offence, and the uncompromising attitude which she had adopted and maintained was not the natural consequence of his behaviour so as to justify the conclusion that he must be presumed to have intended to drive her out; and, accordingly, her complaint would be dismissed.

Counsel: *R. E. G. Howe* for the husband; *Buckee* for the wife.

Solicitors: *Chamberlain & Co.*, for *R. S. Bowen & Hopkin W. Evans*, Port Talbot; *Silkin & Silkin*, for *K. S. Wehrle, Son & Maurice Sheehan*, Port Talbot.

(Reported by G. F. L. Bridgman, Esq., Barrister-at-Law.)

THE WEEK IN PARLIAMENT

From Our Lobby Correspondent

DEATH PENALTY DEBATE

The Prime Minister announced in the Commons that the Government were prepared to consider providing time for a debate on the question of the death penalty, and hoped to be able to do so very soon after the House reassembles following the Christmas Recess. But he rejected suggestions that time should be provided for a Second Reading debate of Mr. Silverman's Bill.

Asked whether, on the occasion of the debate, the decision would be left to a free vote, Sir Anthony Eden replied: " These are matters upon which the Government must be allowed to declare at the time. We must take our responsibility in these matters."

SMALL LOTTERIES AND GAMING BILL

The Small Lotteries and Gaming Bill, introduced by Mr. Ernest Davies (Enfield, E.), has had a Second Reading without a division.

In the course of the debate, the Joint Under-Secretary of State for the Home Department, Sir Hugh Lucas-Tooth, said that the scheme of the Bill was workable. Attention had been called to the fact that the Royal Commission on Betting, Lotteries and Gaming, 1949-51, had not recommended in favour of any alteration in the law on lotteries. The reason that the Royal Commission gave was that the Betting and Lotteries Act, 1934, appeared then to have worked reasonably well.

Since the Report of the Royal Commission the situation had altered considerably. There had been two fairly recent cases in the High Court which had made it clear that certain forms of lotteries which were thought to be legal were not within the exemptions of the Act of 1934. The two cases were *Maynard* v. *Williams and Others*, and *Pearse and Others* v. *Hart*. The effect of those cases was that a society which regularly ran lotteries to raise money could not do so. The Royal Commission's conclusion that there was no need for change would not now necessarily represent its view.

Although the law had not been changed, its effect was different from what it was thought to be by everyone at the time when the Royal Commission was considering those matters. It was more stringent than it was then thought to be. As a result of that, it was quite certain that there was now much greater pressure to circumvent it.

He was not saying that the law as at present interpreted could not be enforced, but that strict enforcement would go beyond what many people would regard as either necessary or proper.

NOTICES

The Rev. W. J. Bolt will lecture on " The Lay Magistracy Today " at Room 404, The London School of Economics, Houghton Street, W.C.2, on Tuesday, December 13, at 4.45 *p.m.* Dr. Mannheim will take the chair. Admission is free, without ticket.

The next court of quarter sessions for the borough of Shrewsbury, Salop, will be held on Wednesday, December 14, 1955, at the Shirehall, Shrewsbury, at 11 *a.m.*

Please, Mister, Can Nobody Help My Dog?

"Yes, of course we can help him—and all the other dogs who may be in special need of care. This is one of the Canine Defence Free Clinics up and down the country where the pet of the poorest receives treatment equal to the finest in the land."

Every National Canine Defence League Clinic has a full hospital service behind it . . . It is to maintain and develop this service—as well as all our other humane activities, protecting dogs from cruelty and ill usage of every kind—that we ask for the practical help of all kind-hearted people.

CANINE DEFENCE

Secretary: R. Harvey Johns, B.Sc., 10 Seymour St., London, W.1

COMMON TIME

Two recent decisions in the courts are of interest to both lawyers and musicians. There are many analogies between the two professions: inherent conceptions of order, theory based upon scientific principles, practice calling for the exercise of humanity and imagination. In both, a too rigid adherence to rule and precedent leads to academic pedantry, as unsatisfying to the legal exponent as to the musical executant or composer. It is always inspiring to watch the breaking of the chain of legalistic tradition and the restoration of a broad, liberal approach.

Such a case is *Bonsor* v. *Musicians' Union*, in which the House of Lords has unanimously overruled a decision 40 years old. In *Kelly* v. *National Society of Operative Printers* (1915) 31 T.L.R. 632, the Court of Appeal had decided that a member could not sue a trade union for breach of the contract of membership, because such a suit would, in effect, be a suit by one individual member against himself and others; and also on the ground that the union officials who had committed the breach had acted as agents for the plaintiff as well as his fellow-members. In the present case the Court of Appeal had felt itself bound by the ratio of *Kelly's* case, though Lord Justice Denning had dissented therefrom. Their Lordships' House, in upholding his minority judgment, has described that ratio as "an unwarranted extension of the principle of agency, quite out of keeping with reality." *The Times*, in a leading article, has welcomed the reversal of a decision which "had put unions in a position of unique privilege, and taken from their members an elementary human right."

Any curtailment of the arbitrary misuse of power against the individual is welcome to lovers of freedom. It is appropriate that this far-reaching decision should have done justice, at last, in the case of a musician. Those who practise this most sublime of the arts should be the last to tolerate the shackles of legalistic tyranny. The recent case echoes, in its way, a piece of musical history—the production of *Die Meistersinger von Nürnberg* in 1868. That work, too, deals with the activities of a Musicians' Union—the powerful Guild of the Mastersingers—and the attempt to exclude from its ranks an individual with new ideas. There is no doubt that the composer, Richard Wagner, saw himself in the *rôle* of Walther von Stolzing, a pioneer of musical reform, struggling for recognition against the legalistic formalism of the old-fashioned critic, Beckmesser. The impetus of the new humanism finally penetrates the stronghold of academic pedantry; Walther joins the Guild, and all ends happily.

The second case comes from the other end of the legal hierarchy. At Bow Street magistrates' court an artist and his wife—bearers of the famous name of Churchill—have been fined 5*s*. each. The charge was drunken and disorderly conduct in Adam and Eve Mews, Kensington. More matters of musical history, and another revolt against legalistic tyranny, are involved. The couple live opposite a Congregational chapel. The hymn-singing and other devotional exercises, audible therefrom, proved displeasing to their aesthetic sense and were (in their view) an interference with the residential amenities they were entitled to enjoy. The male defendant, going across to protest against the disturbance caused by the worshippers, alleged that the chapel caretaker had so far forgotten his peaceable vocation as to hit him over the head. Insult was added to injury when the defendants, who had summoned a police officer, found themselves arrested, and carted off to the lock-up, for drunken and disorderly conduct.

The subsequent proceedings gave rise to some considerable conflict of evidence. The prosecution alleged that, on arrival at the police station, the female defendant "miaouwed like a cat" and that her husband "howled like a dog." The wife's explanation was that she was seeking only to reassure him, and that the sounds she emitted constituted "a private way we have of speaking to each other." The husband's description of his vocal activities, startling in its divergence from the foregoing version, was that he was "singing the dirge from the Second Act of *Fidelio*." Pressed for further detail, he explained that he found a resemblance between his own circumstances and those of Beethoven's tenor character, Florestan.

If such was indeed his belief, he was celebrating, in appropriate conditions, an important anniversary. It was exactly 150 years ago, in November, 1805, that *Fidelio* was first produced. It is true that, the audience being composed mainly of Napoleon's troops, who had just occupied Vienna, the performance was a failure; but the legend that has grown up around *Fidelio* has given it a topical significance as a symbol of resistance to authoritarian tyranny. Florestan, whose *aria* opens the Second Act, is a political prisoner incarcerated, without trial, by the reactionary oppressor Pizarro. Fidelio is the name under which his devoted wife, Leonora, disguised as a man, secures (somewhat improbably) the job of deputy-gaoler in the prison where he is confined. The opera, like the similar story in *Measure for Measure*, has a happy ending. So had the recent episode in Kensington, which once again illustrates the connexions between music and law. If the ears of the local police are so little attuned to Beethoven's music that they can describe its executant as "howling like a dog," that is assuredly their loss rather than his.

A.L.P.

PERSONALIA

RETIREMENT

Superintendent W. S. Brooks, who has been in charge of Newbury, Berks., police division for the past 13 years, is retiring early this month.

OBITUARY

Mr. Arnold Weatherbed, aged 57, the first full-time clerk to the Freebridge, Norfolk, rural district council has died. Mr. Weatherbed had been associated with local government service since 1919. He was first with the clerk to Aylsham, Norfolk, rural district council before the amalgamation with St. Faith's rural district council, and in 1930 joined the staff of Docking, Norfolk, rural district council. Until 1931 he was the accountant, and from then until February, 1939, he was also deputy clerk. He became the first full-time clerk at Freebridge in March, 1939.

PARLIAMENTARY INTELLIGENCE

Progress of Bills

HOUSE OF LORDS

Tuesday, November 22

RURAL WATER SUPPLIES AND SEWERAGE BILL, read 2a.

HOUSE OF COMMONS

Monday, November 21

HOUSING SUBSIDIES BILL, read 2a.

FOOD AND DRUGS BILL, read 3a.

Thursday, November 24

EXPIRING LAWS CONTINUANCE BILL, read 3a.

Friday, November 25

SMALL LOTTERIES AND GAMING BILL, read 2a.

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Bastardy—*Married woman—Allegation that marriage was bigamous—Evidence.*

We act for a young woman who went through a ceremony of marriage at a local register office, on May 28, 1953, a child subsequently being born on September 12, 1953, the birth being registered by the child's father. After the marriage the parties had not set up home together owing to difficulty in finding accommodation and lived at their respective parents' homes. Eventually there were differences between them as a result of which the husband stopped giving the wife any money and she took out a summons for maintenance on the grounds of his neglect to maintain her and the child. In September last, this summons was dismissed because the magistrates considered that certain savings which the wife had had been sufficient for her maintenance up to that time. In January, another summons was taken out under the Guardianship of Infants Act for custody of the child, and when this came before the magistrates the husband's solicitor told the magistrates that he was about to apply to the High Court for a decree of nullity of the marriage on the ground that the wife had refused to consummate it and accordingly the magistrates adjourned the summons for a month.

In the meantime in view of certain information which the wife had given to us we had numerous inquiries made from which it is abundantly clear that the husband had been married to an Italian woman at a Roman Catholic church in Rome in 1947 and he had himself instituted proceedings for divorce in the Birmingham district registry in 1950 on the grounds of alleged desertion. An answer was apparently filed to this petition but nothing further appears to have been done with it. Inquiries have ascertained that the man's Italian wife is still alive and consequently the ceremony of marriage with our client was a bigamous one.

Consequently, the summons under the Guardianship of Infants Act was withdrawn and application has been made for a summons under the Bastardy Acts. The justices' clerk has expressed the view that the justices will require satisfactory proof that the marriage to our client was a bigamous one in view of her two previous applications as a married woman.

Your opinion is sought on the following points:

1. Whether the onus is on our client to prove her marriage is a bigamous one or whether it is on the man to prove that our client is not a "single" woman within the meaning of the Bastardy Acts.

2. If the onus is on our client, is the same standard of proof necessary as in proving bigamy, *viz.*, evidence of original marriage and proof that the original wife was alive at the date of the bigamous marriage?

3. If answer to question 2 is yes, are there any means whereby a certified or translated copy of the original marriage certificate, together with the affidavit of validity which would be required on the man filing his divorce petition in the district registry, can be produced and accepted by the local justices as evidence of the original marriage? The magistrates have issued a *subpoena duces tecum* against the man calling on him to produce these documents at the hearing. Can he be compelled to produce them, or would this be requiring him to give evidence against himself of an incriminating nature? (In this respect it would be mentioned that the facts have been reported to the police and possibly they may have taken proceedings by July 29.)

4. If it is necessary for the magistrates to prove that the legal wife was alive at the date of the bigamous marriage can this be done in the magistrates' court by any form of declaration or affidavit to avoid the expense and necessity of getting her over to this country?

TICIL.

Answer.

1. She must prove she is a single woman. Having admitted that she went through a form of marriage with the defendant, she must, if she wishes to prove that the marriage was invalid, prove the validity of the previous marriage. This will involve documentary evidence and an expert witness as to its validity, *see Rayden on Divorce*, 6th edn., p. 419.

2. In our opinion both facts must be proved. On the second point an inference of fact may be drawn that a person alive and in health at a certain time was alive a short time after, *see Phipson on Evidence*, p. 98, and cases there cited. The standard of proof is not as strict as in a criminal case.

3. If the answers to questions or the production of documents would render the defendant liable to prosecution he can claim that he is not bound to answer or to produce. As to the evidence of the foreign marriage a certificate, explained by an expert witness, could be accepted, *see* the Evidence (Foreign, Dominion and Colonial Documents) Act, 1933.

4. Presumably the first wife has no interest in the present proceedings therefore a statement in writing from her might be accepted under s. 1 of the Evidence Act, 1938.

2.—Contract—*Fixed time for completion—Enforcement.*

I shall be glad of your opinion as to whether this council can enforce the penalty clause which is incorporated in the standard form of contract supplied by the Royal Institute of British Architects in respect of housing works. At the time of signing the contract a date is specified by which completion must be made, and up to the present no action has been taken to enforce the penalty for which provision is included. The reason that no enforcement has been made so far is because of the difficulty which it is acknowledged has been encountered by contractors in the matters of supplying materials and obtaining labour, but the position has altered substantially during the last few years, and for this reason my council considers that it should enforce the clause which would have a salutary effect on contractors.

ACK.

Answer.

There is nothing to prevent strict enforcement of the contractor's obligations. The fact that the employer made concessions at times of difficulty, even to the same contractor, does not estop him from standing on his rights.

3.—Guardianship of Infants—*Infant abroad—Enforcement, variation or discharge of order—Remission of arrears.*

The mother has been granted custody of and maintenance for the child of the marriage under the Guardianship of Infants Acts. The father is in arrear with payments due under the order and the mother has applied for a summons to recover the arrears. The mother was a German national; the father is British; the child was born in this country, and the parties are still resident here.

On April 6, 1955, the mother took the child to Germany to visit his grandparents there; she returned to this country shortly afterwards but left the child with her parents. It is understood they are looking after the child who will eventually return to this country. The father has made a complaint for variation of the order in which he asks for reasonable access and that payments due under the order shall be suspended until the child returns to this country.

A number of questions have arisen upon which there appears to be no direct authority and I should be grateful for your valued opinion:

1. Can the order be enforced against the father having regard to the fact that the child is out of the jurisdiction of the court?

2. In the same circumstances, has the court power to vary the order on the lines required by the father?

3. Would the magistrates have just cause to discharge the order?

4. Have they power to remit the arrears in respect of that period during which the child has been out of the country?

TRUDY.

Answer.

1. In our opinion, yes. The mother may be paying for the maintenance of the child, and we think the order is enforceable while the parties are in this country although the infant may be temporarily abroad.

2. The order can be varied so as to provide for access, and presumably it is within the power of the mother to see that the child comes back to this country. There is no power conferred by the Acts to suspend the operation of the order, and we do not think it would be proper to do this by way of a variation. It is, however, within the powers of the justices to exercise their discretion not to enforce payments while the child is abroad if they are satisfied that there is ground for doing so.

3. In such cases the welfare of the infant is the first and paramount consideration, and we cannot offer an opinion as to the question of custody. So far as maintenance is concerned, there is power to revoke the order under s. 53 of the Magistrates' Courts Act, 1952. It is a matter of discretion, and we do not know all the facts.

4. Yes, they have power to remit all or part of the arrears, under s. 76 of the Magistrates' Courts Act. Arrears under such an order are enforceable in the same way as arrears under an affiliation order, Children Act, 1948, s. 53.

4.—Housing Repairs and Rents Act, 1954—*Publication of list of properties considered unfit.*

Section 1 of this Act requires every local authority to submit to the Minister by August 30, 1955, their proposals for dealing with unfit houses in their districts. The required form of these proposals is contained in circular 55/54, dated August 28, 1954, and requires details of numbers of houses only, not a statement of the actual properties involved. The proposals, when approved by the Minister, must be deposited at the local authority's office and kept open for inspection. In order to compile the return, many sanitary inspectors have quickly surveyed the houses in their districts and noted those considered to be unfit for habitation. It is known that in addition to submitting their proposals in the required form some local authorities intend approving a list of unfit properties from which the required figures were compiled, and exhibiting this list with the approved proposals.

As at this stage no notice will have been served, this procedure would seem to prejudice the owners of these properties without according them their legal opportunity (inherent in the Housing Acts) of appealing against the local authority's decision, or of submitting proposals in regard to the properties. Would you agree that in publishing such a list, which does not appear to be authorized under the Housing Acts, a local authority would be exceeding its powers and duties, and might in fact become liable to action by aggrieved property owners?

C.I.E.T.

Answer.

We agree, for the reasons given. The list described has no legal effect, or statutory warrant in that form, and could be damaging and defamatory.

5.—Justices' Clerks—*Fees—Indictable offences dealt with summarily.*

As clerk to the justices, I recently submitted a claim for the payment of court fees to the county council (which is the practice adopted in this area) in respect of a defendant who was charged with two indictable offences which were dealt with summarily, and which were both dismissed. I claimed 15*s.* in respect of each offence. I was informed that the clerk of the peace had allowed one fee only, and had ruled that where a defendant is charged with two or more similar offences and providing the charges are dealt with on the same day, then only one fee is payable. In this instance the defendant was charged with (1) larceny, and (2) receiving, and separate informations were laid. The defendant elected to be dealt with summarily, and both the charges were heard together. I would be obliged with your opinion as to the correct fee (or fees) payable.

TEERS.

Answer.

In our opinion, the wording of the paragraph in the table of fees contained in sch. 4 to the Magistrates' Courts Act, 1952, shows that a separate fee is chargeable in respect of each offence. There is no proviso about offences being tried at the same time, so we think a separate fee should be charged in respect of each of the two cases.

6.—Road Traffic Acts—*Neglecting police direction—Driver required to proceed away from route he wants to follow—Application of s. 49 of 1930 Act.*

As a result of police action in diverting traffic during the recent rail strike, there has arisen some doubt as to the extent to which the requirements of s. 49 relating to causing the driver of a vehicle to " proceed in or keep to a particular line of traffic when directed so to do by the police constable in the execution of his duty " authorizes the action of a constable who, for good reason, is requiring a motorist to turn at a road junction away from the route he wishes to follow. There is a point of view which suggests that the intention of this section was merely to require drivers to keep to the fast or slow (*i.e.*, off-side or near-side) lines of traffic in a particular street.

I have made an extensive search to find some authoritative statement as to the exact meaning of the words in the section, without any success. I should be extremely grateful for any references which you may be able to give me and your own valued opinion on the point would be appreciated.

STAPLO.

Answer.

A police officer regulating traffic must deal with the traffic as a whole according to the circumstances then existing and he cannot necessarily allow individual drivers to go exactly where they wish. Any proper direction given by a constable who is for the time being engaged in the regulation of traffic in a road is within s. 49, and a person who neglects or refuses to make his vehicle proceed in, or keep to, a particular line of traffic in accordance with such a direction offends against that section.

To avoid conviction in such circumstances we think it would be necessary to prove that the direction was a perverse or unreasonable one, which was not necessary to secure the orderly flow of traffic. It could be argued, therefore, that it was not a direction given by the constable *in the execution of his duty*.

7.—Sunday Entertainments Act, 1932—*Licences for " musical entertainments " on Sundays—Power to impose conditions limiting type of musical entertainment.*

I should be obliged if you would let me have your opinion on the following:

In this district, part IV of the Public Health Acts Amendment Act, 1890, is in force, and licences have been granted by the licensing justices for public music, singing and dancing, subject to conditions which include the following: " The premises may be open on Sundays from 3 *p.m.* to 5.30 *p.m.* and from 7.30 *p.m.* to 10 *p.m.* for the purposes of classical or sacred music."

It has now been suggested that the power to grant such licences for public musical entertainment on Sundays is controlled by the Sunday Entertainments Act, 1932, and that although under that Act the justices have power to attach special conditions in respect of such entertainments, any condition imposed as to the class or nature of the " musical entertainment " which differed to the interpretation in s. 5 of the Act would be *ultra vires*.

I should be pleased if you would advise as to whether the licensing justices can attach conditions as to the class or nature of the musical entertainment, or should the licence be granted for " musical entertainments as defined by s. 5 of the Sunday Entertainments Act, 1932."

OTTEC.

Answer.

In our opinion, the power contained in s. 3 of the Sunday Entertainments Act, 1932, to attach special conditions in respect of musical entertainments, empowers justices to narrow the scope of " musical entertainments " so as to limit the definition contained in s. 5 of the Act to " classical or sacred music." The judgments in *Mills* v. *London County Council* (1925) 89 J.P. 6, contain passages illustrating the test which the High Court will apply in considering such a condition: " looking at the purpose of the condition, it ought to be supported, if it reasonably can be supported."

WHEN people come to a solicitor for advice, it is usually because they are in some sort of tangle. Some are perplexed by intricacies of civil law . . . others may be 'tangled' with the police. Quite often, as you will know from experience, these people are tangled within themselves as well. And, much as you may want to help, there are limits to what a solicitor can do in such cases.

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OFFICIAL AND CLASSIFIED ADVERTISEMENTS, ETC. (*contd.*)

BRIERLEY HILL URBAN DISTRICT COUNCIL

Appointment of Legal Assistant

APPLICATIONS are invited for the above appointment in the office of the Clerk of the Council.

Candidates must have had experience in conveyancing and general legal work.

The salary will be within Grade III of the A.P.T. Division of the National Scales of Salaries—maximum £725 per annum.

The Council will provide housing accommodation if required.

Applications, stating age, qualifications and the nature of the work previously undertaken, and accompanied by copies of two recent testimonials, should reach the undersigned not later than Monday, December 12, 1955.

HERBERT HEX,
Clerk of the Council.

Civic Buildings,
Brierley Hill.

WILTSHIRE

Appointment of Additional Female Probation Officer

APPLICATIONS are invited for this appointment based on Chippenham.

Conditions and salary subject to Probation Rules, 1949-55. Car required. Allowance paid. Applications, in writing, stating age, qualifications and experience, with names of two referees, to reach Clerk of the Peace, County Hall, Trowbridge, by December 14, 1955.

COUNTY BOROUGH OF GLOUCESTER

Assistant Solicitor

APPLICATIONS, to be accompanied by three testimonials, are invited for the above appointment. Salary £690×£30—£900. Closing date December 8, 1955.

A. G. W. BOGGON,
Town Clerk.

Guildhall,
Gloucester.

SUFFOLK PROBATION AREA

Appointment of Whole-time Male Probation Officer

APPLICATIONS are invited for the appointment of a whole-time Male Probation Officer.

Applicants must be not less than 23 nor more than 40 years of age, except in cases of a serving Probation Officer.

The appointment and salary will be in accordance with the Probation Rules, 1949-55, and subject to medical examination and superannuation deductions.

Applications, stating age, present position, qualifications and experience, and the names of three individuals to whom reference may be made, must reach the undersigned not later than December 17, 1955.

G. C. LIGHTFOOT,
Secretary of the Suffolk Probation Committee.

County Hall,
Ipswich.

WIGAN MAGISTRATES' COURTS COMMITTEE

First Assistant to Justices' Clerk

APPLICATIONS are invited for the appointment of Chief Assistant to the (full-time) Justices' Clerk for the County Borough of Wigan. The person appointed will be required to take clerical charge of the office, to be responsible for the accounts, and in the absence of the Clerk to deputize for him. The salary is £560 with annual increments of £20 to £640, but the salary will be reviewed when national scales are promulgated. The population of Wigan is 84,546.

Applications, with the names of two referees or with copies of two recent testimonials, should reach me by December 7, 1955.

J. B. HORSMAN,
Clerk to the Magistrates' Courts Committee.

69 King Street, Wigan.

CITY AND COUNTY OF BRISTOL

Assistant Solicitor

APPLICATIONS invited for above appointment at salary in accordance with Grade A.P.T. VII (£900—£1,100) of National Scale. Appointment is subject to three months' notice. Experience in advocacy will be an advantage.

Applications, giving names of two referees, must reach me by December 17, 1955.

ALEXANDER PICKARD,
Town Clerk.

Council House, Bristol, 1.

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Amended Advertisement.

COUNTY OF SALOP

Appointment of Clerk to the Justices for The Wrekin Division

APPLICATIONS are invited from persons qualified under s. 20 of the Justices of the Peace Act, 1949, for the full-time appointment of Clerk to the Justices for The Wrekin Petty Sessional Division (population 62,000). Salary within the scale £1,570 × £52 10s.—£1,832 10s. per annum, commencing salary according to qualifications and experience. A travelling and subsistence allowance of £100 per annum will be paid. If pending proposals for review of Petty Sessional Divisions in the County are confirmed the population will shortly be increased to about 70,000 and at a later stage to 83,000.

Conditions of Service will be those agreed by the Joint Negotiating Committee for Justices' Clerks. Office accommodation and clerical assistance will be provided at Wellington and subsidiary offices elsewhere as required.

The appointment will be superannuable subject to a medical examination and three months' notice on either side. Applications, giving age and full details of education, qualifications and experience, together with the names and addresses of three referees, should reach me not later than December 15, 1955.

The successful applicant will be required to take up the appointment on or about April 1, 1956, and reside in or near the Division. Separation allowance payable up to six months.

Persons who have already applied for the post need not repeat their applications.

G. C. GODBER,
Clerk to the Magistrates' Courts Committee.

Shirehall, Shrewsbury.

NORTH RIDING OF YORKSHIRE MAGISTRATES' COURTS COMMITTEE

APPLICATIONS are invited from duly qualified persons for the part-time appointment of Clerk to the Justices for the Langbaurgh West Petty Sessional Division. Personal salary £300 per annum rising to £400 by two annual increments. Allowances—at present £250—are paid for office accommodation and staff. The successful applicant will be required to provide the office accommodation at Stokesley, and to give his personal attention to the appointment. Applications, giving qualifications and experience, must be sent to "The Clerk to the Magistrates' Courts Committee, County Hall, Northallerton" not later than December 24, 1955.

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COUNTY BOROUGH OF WEST HAM

Appointment of Full-time Woman Probation Officer

Applicants must be not less than 23 nor more than 40 years of age, except in cases of a serving Probation Officer.

The appointment and salary will be in accordance with the Probation Rules and subject to medical examination and superannuation deductions.

Applications, stating age, present position, qualifications and experience, and the names of three persons to whom reference may be made, must reach the undersigned not later than December 21, 1955.

G. V. ADAMS,
Clerk to the Justices and Secretary to the Probation Committee.

West Ham Magistrates' Court,
West Ham Lane,
Stratford, London, E.15.

DURHAM COUNTY MAGISTRATES' COURTS COMMITTEE

Petty Sessional Divisions of Jarrow and Blaydon

APPLICATIONS are invited for an Assistant to the Clerk to the Justices.

Applicants should possess considerable experience of the work of a Justices' Clerk's Office, including the keeping of the Fines and Fees Accounts, the issue of process and should be competent shorthand typists.

Salary £550 × £20—£610 per annum. The post is superannuable and subject to a medical examination.

Applications, stating age, particulars of experience, and the names and addresses of two referees, to be sent to the undersigned not later than seven days after the publication of this advertisement.

L. SHAWYER,
Clerk to the Justices.

271 Albert Road,
Jarrow.

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COUNTY BOROUGH OF WOLVERHAMPTON

Appointment of Male Probation Officer

APPLICATIONS are invited for the appointment of full-time male Probation Officer for the County Borough of Wolverhampton. The appointment and salary will be subject to the Probation Rules, and the selected candidate will be required to pass a medical examination.

Applications, stating age, present position, qualifications and experience, together with the names of two referees, must reach the undersigned not later than December 13, 1955.

T. T. CROPPER,
Secretary of the Probation Committee.

48 Waterloo Road,
Wolverhampton.

METROPOLITAN BOROUGH OF CAMBERWELL

Law Clerk

SALARY Grade A.P.T. II of the National Scales (£590—£670, inclusive of £30 London Weighting). Applicants should be capable of carrying out conveyancing transactions with slight supervision. No housing provided. Application form from Town Clerk, Town Hall, S.E.5. Closing date Wednesday, December 21, 1955.

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